

Inventor: John C. Reed  
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ectopically expresses a nucleic acid molecule encoding a BI-1 polypeptide corresponding to SEQ ID NO:4, and to a method of increasing the resistance of a plant to biotic or abiotic stress by ectopically expressing a nucleic acid molecule encoding a BI-1 polypeptide; and

Group III: Claims 44 to 46, directed to an isolated polypeptide corresponding to SEQ ID NO:4.

Election of Invention

Applicant traverses the restriction requirement for the reasons stated below. Nevertheless, in order to be responsive to the Office Action, Applicant elects the invention of Group II, claims 29 to 43, for examination. Applicant reserves the right to pursue prosecution of non-elected claims in a later filed application claiming the benefit of priority of the above-identified application.

The restriction requirement is traversed with respect to the division of the claims of elected Group II from those of Groups I and III. Applicant submits that, while the claims of Group II are patentably distinct from those of Group I and III, a thorough search of the claims of Group II likely will result in art relevant to the examination of the claims of Groups I

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and III. The claims of Group II are directed to non-naturally occurring plants that ectopically express a nucleic acid molecule encoding a tomato BI-1 polypeptide or active fragment, and methods of increasing resistance of a plant to stress by ectopically expressing a nucleic acid molecule encoding a tomato BI-1 polypeptide or active fragment. The claims of Group I are directed to isolated nucleic acid molecules encoding a tomato Bax inhibitor-1 (BI-1) or active fragment that are used in the plants and methods of the claims of Group II. The claims of Group III are directed to a tomato BI-1 polypeptide or active fragment that is expressed in the plants recited in the claims of Group I.

Applicant submits that a search of non-naturally occurring plants that ectopically express a nucleic acid molecule encoding a tomato BI-1 polypeptide or active fragment, and methods involving ectopically expressing such a molecule in a plant, will overlap with a search of nucleic acid molecules that encode a tomato BI-1 polypeptide as well as the encoded tomato BI-1 polypeptide. In this regard, art relevant to expressing a tomato BI-1 nucleic acid molecule in a plant is likely to include a search of expressing a tomato BI-1 polypeptide or active fragment in general, which would encompass identifying tomato BI-1 polypeptides and active fragments capable of being expressed. In view of the common body of literature relevant to the claims of Groups I through III, Applicant submits that the Examiner would not be seriously burdened to search and examine the claims of Groups I through III together, and doing so would increase the efficiency of the search and examination process of this application.

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CONCLUSION

In view of the remarks submitted herein, Applicant elects claims 29 to 43 for examination, and requests that the Examiner reconsider the restriction requirement and examine at least one of Groups I or III together with the elected claims of Group II.

The Examiner is invited to call the undersigned agent or Cathryn Campbell if there are any questions regarding this application.

Respectfully submitted,

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